U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0291 BLA

AARON GOODMAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 05/26/2016
	)	
ELKAY MINING COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05756) of Administrative Law Judge Richard A. Morgan rendered on a miner's claim filed

pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on March 3, 2011.[1]

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] the administrative law judge credited claimant with twenty-four and one-half years of coal mine employment, as stipulated by the parties, of which at least fifteen years were underground and, therefore, found that claimant established fifteen years of qualifying coal mine employment. The administrative law judge further found the medical evidence of record sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2).[3] The administrative law judge, therefore, found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge then found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his analysis of the medical opinion evidence, and failed to comply with the requirements of the Administrative Procedure Act (APA), in finding that employer did not establish rebuttal of the Section 411(c)(4) presumption.[4] Claimant responds, urging affirmance of

[1] Claimant filed a previous claim on April 13, 1998, which was denied by the district director on July 22, 1998, because claimant failed to establish any element of entitlement under 20 C.F.R. Part 718. Director's Exhibit 1. Claimant took no further action on this claim.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] In light of his finding that claimant established a totally disabling respiratory or pulmonary impairment, the administrative law judge found that claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c)(2); Decision and Order at 17, 33.

[4] The Administrative Procedure Act (APA) provides that every adjudicatory decision must include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, did not file a substantive brief in this appeal.[5]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis, or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found that employer failed to establish rebuttal by either method. Decision and Order at 25, 32.

Employer contends that the administrative law judge erred in finding that employer failed to disprove the existence of legal pneumoconiosis.[7] In rendering this finding, the administrative law judge considered the medical opinions of Drs. Zaldivar

[5] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established twenty-four and one-half years of qualifying coal mine employment and the existence of a totally disabling respiratory or pulmonary impairment and, therefore, invoked the Section 411(c)(4) presumption, and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] The record indicates that claimant's coal mine employment was in West Virginia. Director's Exhibits 1, 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[7] The administrative law judge found that the x-ray evidence of record was sufficient to establish the absence of clinical pneumoconiosis and, therefore, he found that employer rebutted clinical pneumoconiosis on the basis of the x-ray evidence. Decision and Order at 21. The administrative law judge further found that employer rebutted the existence of clinical pneumoconiosis on the basis of the medical opinions as Drs. Rasmussen, Zaldivar and Castle each opined that clinical pneumoconiosis is not present. Decision and Order at 24; Director's Exhibit 14; Employer's Exhibits 1, 2.

and Castle.[8] Director's Exhibit 14; Claimant's Exhibit 1. Dr. Zaldivar opined that claimant does not suffer from legal pneumoconiosis, and that his restrictive pulmonary impairment and gas exchange abnormalities are primarily due to obesity, with some contribution by asthma, cigarette smoke and asbestos exposure.[9] Employer's Exhibits 1; 5 at 26, 29, 32, 33. Dr. Castle similarly opined that claimant does not suffer from legal pneumoconiosis, and that his respiratory impairment, in the form of restrictive lung disease with hypoxemia and a ventilation/perfusion mismatch, is due to obesity, with some contribution by claimant's prior cigarette smoking habit and possible asthma.[10] Employer's Exhibits 2; 6 at 36-37, 40.

The administrative law judge accorded little weight to the opinions of Drs. Zaldivar and Castle because he found that they were not well-reasoned, inconsistent with the regulations, or inadequately explained. Decision and Order at 23-25. The administrative law judge, therefore, found that their opinions were not sufficient to disprove the existence of legal pneumoconiosis. *Id.*

[8] The administrative law judge also considered the opinion of Dr. Rasmussen, that claimant suffers from legal pneumoconiosis, in the form of a restrictive ventilatory impairment and hypoxemia due, in significant part, to coal mine dust exposure. Decision and Order at 10-11, 23; Director's Exhibit 14; Claimant's Exhibit 1. Dr. Rasmussen opined that claimant's obesity also significantly contributed to his impairment, and that claimant's history of tobacco abuse and asbestos exposure were likely co-contributors. Director's Exhibit 14; Claimant's Exhibit 1 at 71. The administrative law judge found that Dr. Rasmussen's diagnosis of legal pneumoconiosis was well-reasoned and documented. Decision and Order at 23.

[9] Dr. Zaldivar opined that claimant's restrictive impairment is due to his morbid obesity. Employer's Exhibit 1. Additionally, Dr. Zaldivar stated that claimant's problem with oxygenation during exercise is due to a combination of his history of cigarette smoking and asthma, both of which caused damage to the peripheral airways of claimant's lungs, but without causing overt damage. *Id*. Dr. Zaldivar further opined that claimant's prior work with asbestos may have contributed to the low diffusion seen in his testing. *Id*.

[10] Dr. Castle opined that claimant does not suffer from legal pneumoconiosis and that the major cause of claimant's respiratory impairment is his morbid obesity. Employer's Exhibits 2; 6 at 34, 36. Dr. Castle further opined that claimant's smoking history and asbestos exposure may have also contributed to his pulmonary abnormalities. Employer's Exhibits 2; 6 at 39, 40.

Employer argues that the administrative law judge erred in his consideration of the opinions of Drs. Zaldivar and Castle. Employer's Brief at 15-23. We disagree. As summarized by the administrative law judge, Dr. Zaldivar excluded coal mine dust exposure as a contributing factor to claimant's impairment based, in part, on his opinion that the pattern of claimant's impairment, that of pure restriction unaccompanied by either obstruction or progressive massive fibrosis radiographically, is not typical of coal mine dust-related disease.[11] The administrative law judge permissibly found that this reasoning was inconsistent with the regulations, which define legal pneumoconiosis to include "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment."[12] 20 C.F.R. §718.201(a)(2); *see Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 321, 25 BLR 2-255, 2-260 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313, 25 BLR 2-115, 2-127 (4th Cir. 2012); *Dante Coal Co. v. Jones*, 164 F. App'x 338, 347 (4th Cir. 2006); Decision and Order 23-24.

The administrative law judge further questioned Dr. Zaldivar's opinion regarding the cause of claimant's restrictive defect and gas exchange impairment because he did not adequately explain how he eliminated claimant's coal mine dust exposure as a source of the impairment. Decision and Order at 24-25. Specifically, the administrative law judge permissibly found that, in attributing claimant's impairment to multiple other factors, Dr. Zaldivar did not adequately explain why claimant's more than twenty-four years of coal mine dust exposure did not also contribute to, or aggravate, his restrictive impairment or gas exchange abnormalities. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 23-24. As it is supported by substantial evidence, we affirm the administrative law judge's discretionary finding that Dr. Zaldivar's opinion did not establish that claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

[11] Specifically, Dr. Zaldivar stated that "coal dust doesn't follow this pattern of restriction without progressive massive fibrosis radiographically, and he doesn't have that. It does not cause low diffusion capacity in the absence of airway obstruction, and he doesn't have that either." Employer's Exhibit 5 at 33-34. Rather, Dr. Zaldivar opined, with pneumoconiosis there will be a "combination of obstruction and restriction at the same time." *Id.*

[12] Furthermore, the regulations recognize that a diagnosis of legal pneumoconiosis is not dependent upon an x-ray reading that is positive for pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4), (b).

The administrative law judge also discounted Dr. Castle's opinion, finding it to be equivocal and inadequately explained. Decision and Order at 24. Specifically, the administrative law judge observed correctly that, while Dr. Castle opined that claimant "most likely does not suffer from legal coal workers' pneumoconiosis," in part, because there was "no evidence of the development or progression of any pneumoconiosis or coal mine dust induced disease," he also stated that "the physiologic studies have demonstrated a progressive finding of restrictive lung disease between 1998 and 2012." Decision and Order at 24; Employer's Exhibit 2 at 10-11. Further, the administrative law judge noted that, to the extent Dr. Castle attempted to reconcile this discrepancy by stating that any worsening in claimant's impairment could be entirely attributed to other factors such as claimant's "obesity . . . previous tobacco smoking habit and possible bronchial asthma,"[13] he failed to adequately explain why claimant's more than twenty-four years of coal mine dust exposure could not have contributed to, or aggravated, claimant's pulmonary impairment, along with these other factors. Decision and Order at 24; Employer's Exhibit 2. As the administrative law judge acted within his discretion in finding Dr. Castle's conclusions to be inadequately explained, we affirm the administrative law judge's determination to discount his opinion. *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763, 21 BLR 2-587, 2-605 (4th Cir. 1999); Decision and Order at 24.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight. *See Cochran*, 718 F.3d at 321, 25 BLR at 2-260; *Looney*, 678 F.3d at 315-16, 25 BLR at 2-130. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Zaldivar and Castle,[14] the

[13] In discussing a possible asthmatic component, Dr. Castle noted a familial history of asthma, based on claimant's mother and a grandson having been diagnosed with asthma, as well as claimant's personal history of hay fever. However, Dr. Castle further noted that claimant did not demonstrate a reversible airway obstruction on pulmonary function testing, but stated that it remained possible that claimant has an asthmatic problem. Employer's Exhibit 2.

[14] Employer contends that the administrative law judge erred in evaluating the professional credentials of Drs. Rasmussen, Zaldivar and Castle, arguing that the administrative law judge violated the APA by not explaining why the credentials of Drs. Zaldivar and Castle were not equal or superior to Dr. Rasmussen's credentials. Employer's Brief at 11-13. Because the administrative law judge did not discount the

only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis.[15] Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i). Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.[16]

The administrative law judge next addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge rationally found that the same reasons he provided for discrediting the opinions of Drs. Zaldivar and Castle, that claimant does not suffer from legal pneumoconiosis, also undercut their opinions that claimant's disabling respiratory impairment was not caused by pneumoconiosis. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, BLR (4th Cir. 2015); Decision and Order at 31-32. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of claimant's total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

---

opinions of Drs. Zaldivar and Castle on this basis, we need not address this argument. Any error in the administrative law judge's evaluation of the physicians' relative qualifications is harmless. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Decision and Order at 23-25.

[15] Because the administrative law judge provided valid bases for according less weight to the opinions of Drs. Zaldivar and Castle, we need not address employer's remaining arguments regarding the weight he accorded their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[16] Because employer bears the burden to prove that claimant does not have pneumoconiosis, we need not address employer's arguments regarding the weight the administrative law judge accorded to the opinion of Dr. Rasmussen, that claimant suffers from legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Employer's Brief at 23-27.

Claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption. Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge